IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11369 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBAJI KELAVNI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11369 of 2002

MR MUKESH R SHAH for Petitioner No. 1

MR MK PATEL, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/12/2002

ORAL JUDGEMENT

Rule. Mr MK Patel learned AGP waives service of rule on behalf of the respondents.

2. The petitioner-trust has been running a girls school at Ambaji since June, 1993. However, when the recognition was granted to the school in the year 1993 it was a nongrantable school. On 1-9-1997, the State Government issued a resolution providing that the schools which were granted recognition as nongrantable schools could be granted recognition with grant provided the earlier recognition was granted between June, 1993 and June, 1997. In view of the above resolution, the petitioner-trust made an application to the District Education Officer on 24-11-1997. The application was both for recognition with grant and also for regularising appointment of the staff of the school for the purposes of grant. A formal proposal was again sent by the petitioner to the DEO on 15-12-1997. Certain further particulars were called for by the DEO and the petitioner furnished the same. The matter was thereafter placed before the State Government in the Education epartment.. At the hearing before the Commissioner of Education, request was made both for converting the school run by the petitioner-trust into a grantable school and also to regularise the services of the four teachers appointed by the school management. A hearing took place before the Commissioner and ultimately by order dated 10-2-2002 (Annexure L), the Commissioner has rejected both the requests. The State Government had earlier by communication dated 3-1-2002 informed the petitioner-trust that the proposal for regularising the services of teachers cannot be granted. The petitioner has, therefore, approached this Court.

3. Mr MR Shah learned counsel for the petitioner has submitted that the respondent-authorities have erred in rejecting the petitioner's application on the ground that the Government Resolution dated 1-9-1997 has been cancelled or withdrawn by the Government Resolution dated 30-6-1999. It is submitted that the petitioner had submitted its application for regularisation in November/December, 1997 and merely because the authorities took unreasonably long time in deciding the application, the petitioner's claim on the basis of the said Government Resolution dated 1-9-1997 cannot be defeated.

Secondly, it is submitted that in any view of the matter, the State Government in the Education Department has passed orders dated 8-2-2002 and 30-3-2002 (Annexure M) by which 72 schools have been converted into grantable schools and the order dated 30-3-2002 also deals with many schools where the Government found irregular appointment of teaching and nonteaching staff and the

Government has imposed certain conditions about such teaching and non-teaching staff. Mr Shah for the petitioner states that the petitioner is agreeable to all such conditions being imposed on it while converting the girls school run by the petitioner-trust as a grantable school.

4. On the other hand, Mr MK Patel, learned AGP for the respondents submits that since the petitioner's application came to be decided by the Commissioner of Schools in February, 2002 and by the State Government in January, 2002, the case was governed by Government Resolution dated 30-6-1999 by which the concessions granted to the nongrantable schools as per GR dated 1-9-1997 were already withdrawn. It is further submitted that the Commissioner of Schools has passed a detailed order giving reasons for not regularising the services of the teachers appointed by the petitioner-trust. It is, therefore, submitted that the petition deserves to be dismissed.

5. Having heard the learned counsel for the parties, it appears to the Court that while no fault can be found with the respondent-authorities especially the Commissioner and the State Government in rejecting the petitioner's application for regularising the appointment of the teachers whose case have been considered by the authorities in the aforesaid impugned orders, the authorities do not seem to have applied their mind to the fact that the petitioner-institution had already made application to the DEO as far back as in November/December, 1997 for converting the school into grantable school and, therefore,there was no delay on the part of the petitioner-trust in applying for the benefit of grant under the Government Resolution dated 1-9-1997. Secondly, the authorities have also not indicated why the petitioner-institution could not be given the benefit of grant subject to the conditions imposed in the order dated 30-3-2002.

In the order dated 30-3-2002, the State Government in the Education Department has imposed the following conditions while granting permission for making an institution grantable school:-

(i) The irregular appointments of teaching and nonteaching staff in the school shall not be regularised;

(ii) The application/representation/proposal submitted by such schools for regularising the appointment

of irregularly recruited employees shall not be taken into consideration in future;

(iii) Such schools shall have to terminate the services of irregularly appointed staff members and shall have to make fresh recruitment in accordance with the rules.

6. In view of the above, this petition is allowed and the respondents are directed to reconsider the matter only as regards the petitioner's application for converting girls school run by the petitioner-trust as contained in the order No.UMS/1202-CC-84-G.1 dated 30-3-2002 passed by the State Government in the Education Department.

This shall be done within one month from the date of receipt of the writ of this order or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.
Direct service is permitted.

(M.S. Shah,J)
zgs/-